IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO.24027 of 1995

Between:

Marka Ramanna, S/o Narsaiah,
R/o Paarkal, Warangal District.

..... PETITIONER

AND

1 The Commissioner of Excise,
Government of A.P. Hyderabad.
2 The Deputy Commissioner of Excise,
Warangal.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction declaring that the 1st respondent has no jurisdiction to order confiscation of vehicle-Rajdoot Motor Cycle bearing registration No.A.P.36-B/7501-Chasis No.1282834 of the petitioner until he is tried in a competent criminal court and set aside the proceedings of the second respondent dated 11-10-1995 in Proc.No.1163/94/PE/B2 as illegal and arbitrary.

Counsel for the Petitioner: Mr. J. Venkateswara Reddy.

Counsel for the Respondents: G.P for Excise.

The Court made the following:

ORDER:

This Writ Petition is filed against the orders passed by the second respondent vide Cr.No.1163/94/PE/B2, dated 11.10.1995 confiscating the vehicle-Rajdoot Motor Cycle bearing No.AP 36 B 7501 of the petitioner.

The main case of the petitioner is that on 11.10.1994 when he kept his motor cycle at the house of his friend, namely, Sammaiah, the Sub-Inspector of Police, Parkal took away his motor cycle alleging that the vehicle was used for transporting illicit liquor and implicated him and his friend Sammaiah in a case in Crime No.160 of 1994. Subsequently, the second respondent, after calling for explanation from him, ordered confiscation of the vehicle vide proceedings No.1163/94/Ex/B2, dated 09.12.1994. The confiscation order passed by the second respondent, even before proving the allegations made against him in the case registered before the Judicial Magistrate of First Class, Parkal, is contrary to law and against the principles of natural justice. Aggrieved by the said orders of the second respondent, he preferred an appeal before the first respondent and since the vehicle was not released pending the appeal, he filed Writ Petition No.2221 of 1995 before this Court for release of the said vehicle and as per the directions of this Court, the vehicle was released to him on 06.03.1995 for interim custody. The first respondent did not issue any notice to him before disposing the appeal nor communicated the order copy. But, surprisingly, he received a notice dated 11.10.1995 stating that the first respondent rejected his appeal and the order of confiscation has become final and the motor cycle shall vest in the Government and he was directed to produce the motor cycle. Challenging the said notice the present writ petition is filed.

The respondents filed a detailed counter-affidavit stating that the vehicle in dispute is involved in transporting the I.D. liquor by the petitioner and another and so the Sub-Inspector of Police, Parkal has registered a case against them vide F.I.R.No.160 of 1994 and later on transferred the case papers and property to the Excise Sub-Inspector, Parkal, who in turn registered the case vide Crime No.5/94-95 under section 34(a) of the A.P. Excise Act, 1968 and after investigation the seized property was produced before the Dy. Commissioner of Excise, Warangal for confiscation as per the provisions of Sections 45 and 46 of the A.P. Excise Act, 1968 and the Dy. Commissioner of Excise, Warangal issued a show cause notice under section 46-A of the A.P. Excise Act, 1968 vide Cr.No.1163/94/Ex/B2, dated 25.10.1994 to the petitioner informing him the grounds on which it was proposed to confiscate his motor cycle for having involved in transportation of I.D. liquor and the petitioner has submitted his explanation. Taking into consideration of the said explanation, the Dy. Commissioner of Excise, Warangal has passed confiscation orders on 09.12.1994 under section 46 of the A.P. Excise Act. Against the said orders, the petitioner has preferred an appeal under section 46-C of the A.P. Excise Act, 1968 before the Commissioner of Excise, Hyderabad. During the pendency of the appeal, the petitioner filed Writ Petition No.2221 of 1995 before this Court and as per the directions of this Court in the said writ petition, the vehicle was released to the petitioner for interim custody on his written undertaking to the effect that he would not encumber or alienate the vehicle in any manner and would produce the same as and when required by the respondents. The petitioner was given reasonable opportunity to prove his innocence by granting several adjournments i.e., 06.05.1995, 25.05.1995 and 30.06.1995 in the appeal and when the petitioner failed to produce any material to substantiate his contention, the Commissioner of Excise has rejected the appeal filed by the petitioner on 03.07.1995 and confirmed the confiscation order passed by the Dy. Commissioner of Excise, Warangal. Hence the confiscation order has become final and the petitioner was directed to produce the vehicle before the Dy. Commissioner of Excise, Warangal for further action.

Heard the learned counsel for the petitioner and learned Government Pleader for Excise.

The main contention of the learned counsel for the petitioner is that as the petitioner was not given any opportunity of hearing before passing the impugned order, the same is violative of the principles of natural justice and liable to be set aside.

On the other hand, the learned Government Pleader for Excise contended that the vehicle in dispute is involved in transporting I.D. liquor and the petitioner was given sufficient opportunity to put forth his case by granting number of adjournments, but as the petitioner has not come forward to substantiate his contention, the appeal was rejected and the impugned order came to be passed.

A perusal of the case diary and remand report in Crime No.160 of 1994 and the impugned order goes to show that the vehicle in dispute was involved in transporting I.D. liquor. The petitioner was also given reasonable opportunity in the appeal by granting adjournments i.e., 06.05.1995, 25.05.1995 and 30.06.1995 to prove his innocence. Under the circumstances, the contention of the learned counsel for the petitioner that no opportunity was given to the petitioner to prove his innocence and the action of the respondents is in violation of principles of natural justice cannot be accepted. The petitioner has failed to produce any material before the original authority and appellate authority to prove his innocence that he is not involved in any offence. I see no illegality or irregularity in the impugned order passed by the second respondent warranting interference of this Court. Under the circumstances, there are no merits in the writ petition and the same is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No costs.

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(N.V. RAMANA, J)

Date: 28.09.2004

Nsr/Asp

To

1 The Commissioner of Excise,
Government of A.P. Hyderabad.
2 The Deputy Commissioner of Excise,
Warangal.

3. Two CCs to GP for Excise, High Court of AP, Hyderabad (OUT)

4. Two CD copies.